

Solicitation # CFSA-04-R-0003
Transportation Services

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

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SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supply and Services Contracts dated April 2003, (Attachment J.1), the District of Columbia Procurement Practices Act of 1985, as amended, and Title 27 of the District of Columbia Municipal Regulations, as amended, are incorporated as part of the contract resulting from this solicitation.

I.2 CONTRACTS THAT CROSS FISCAL YEARS

Continuation of this contract beyond the fiscal year is contingent upon future fiscal appropriations.

I.3 CONFIDENTIALITY OF INFORMATION

All information obtained by the Contractor relating to any employee of the District or customer of the District shall be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm, or corporation, in accordance with the District and Federal laws governing the confidentiality of records.

I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RESTRICTION ON DISCLOSURE AND USE OF DATA

Offerors who include in their proposal data that they do not want disclosed to the public or used by the District Government except for use in the procurement process shall:

1.5.1 Mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District Government and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process.

If however, a contract is awarded to this Offeror as a result of or in connection with the submission of this data, the District Government shall have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this data if it is obtained from another source. The data subject to this restriction are contained in sheets (insert numbers or other identification of sheets)."

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15.2 Mark each sheet of data it wishes to restrict with the following legend:

“Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.”

I.6 RIGHTS IN DATA

I.6.1 “Data,” as used herein, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

I.6.2 (a) The term “Technical Data”, as used herein, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work, or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer printouts.

(b) Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and computer software documentation. Technical data does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

I.6.3 The term “Computer Software”, as used herein means computer programs and computer databases. “Computer Programs”, as used herein means a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. “Computer Programs” include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort merge programs, and automated data processing equipment maintenance diagnostic programs, as well as applications programs such as payroll, inventory control and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general purpose in nature or designed to satisfy the requirements of a particular user.

I.6.4 The term “computer databases”, as used herein, means a collection of data in a form capable of being processed and operated on by a computer.

I.6.5 All data first produced in the performance of this Contract shall be the sole property of the District. The Contractor hereby acknowledges that all data, including, without limitation, computer program codes, produced by Contractor

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for the District under this Contract, are works made for hire and are the sole property of the District; but, to the extent any such data may not, by operation of law, be works made for hire, Contractor hereby transfers and assigns to the District the ownership of copyright in such works, whether published or unpublished. The Contractor agrees to give the District all assistance reasonably necessary to perfect such rights including, but not limited to, the works and supporting documentation and the execution of any instrument required to register copyrights. The Contractor agrees not to assert any rights in common law or in equity in such data. The Contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without written consent of the District until such time as the District may have released such data to the public.

I.6.6 The District shall have restricted rights in data, including computer software and all accompanying documentation, manuals and instructional materials, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, provided however, not withstanding any contrary provision in any such license or agreement, such restricted rights shall include, as a minimum the right to:

I.6.6.1 Use the computer software and all accompanying documentation and manuals or instructional materials with the computer for which or with which it was acquired, including use at any District installation to which the computer may be transferred by the District;

I.6.6.2 Use the computer software and all accompanying documentation and manuals or instructional materials with a backup computer if the computer for which or with which it was acquired is inoperative;

I.6.6.3 Copy computer programs for safekeeping (archives) or backup purposes; and

I.6.6.4 Modify the computer software and all accompanying documentation and manuals or instructional materials, or combine it with other software, subject to the provision that the modified portions shall remain subject to these restrictions.

I.6.7 The restricted rights set forth in section I.6.6 are of no effect unless

(i) the data is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure is subject to restrictions stated in
Contract No. _____
With _____ (Contractor's
Name) and

(ii) If the data is computer software, the related computer software documentation includes a prominent statement of the restrictions

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- (iii) applicable to the computer software. The Contractor may not place any legend on the computer software indicating restrictions on the District's rights in such software unless the restrictions are set forth in a license or agreement made a part of the contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the District of liability with respect to such unmarked software.

- I.6.8** In addition to the rights granted in Section I.6.9 below, the Contractor hereby grants to the District a nonexclusive, paid-up license throughout the world, of the same scope as restricted rights set forth in Section I.6.9 below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the District under this contract. Unless written approval of the contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the District under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the District any rights necessary to perfect a copyright license of the scope specified in the first sentence of this paragraph.
- I.6.9** Whenever any data, including computer software, are to be obtained from a subcontractor under this contract, the Contractor shall use Section I.6 in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.
- I.6.10** For all computer software furnished to the District with the rights specified in Section I.6.5, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope specified in Section I.6.5. For all computer software furnished to the District with the restricted rights specified in Section I.6.6, the District, if the Contractor, either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under this contract or any paid-up maintenance agreement, or if Contractor should be declared bankrupt or insolvent by the court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the then current version of the source code supplied under this contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.
- I.6.11** The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.
- I.6.12** Nothing contained in this clause shall imply a license to the District under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the District under any patent.

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- I.6.13** Paragraphs I.6.6, I.6.7, I.6.8, I.6.11 and I.6.13 above are not applicable to material furnished to the Contractor by the District and incorporated in the work furnished under contract, provided that such incorporated material is identified by the Contractor at the time of delivery of such work

I.7 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District Contractor or by any District employee.

I.8 FIRST SOURCE EMPLOYMENT AGREEMENT

The Contractor shall maintain compliance with the terms and conditions of the First Source Employment Agreement, Attachment J.3, executed between the District of Columbia and the Contractor throughout the entire duration of the contract, including option periods if any.

I.9 SUBCONTRACTS

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior, written consent of the Contracting Officer. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District shall have the right to review and approve prior to its execution to the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.10 CONTINUITY OF SERVICES

- I.10.1** The Contractor recognizes that the services provided under this contract are vital to the District of Columbia and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District Government or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

I.10.1.1 Furnish phase-out, phase-in (transition) training; and

I.10.1.2 Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

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I.11 INSURANCE

The Contractor shall obtain the minimum insurance coverage set forth below prior to award of the contract and within ten (10) calendar days after being called upon by the District to do so and keep such insurance in force throughout the contract period.

I.11.1 Contractor shall secure and maintain the insurance policies required in this section. All policies shall be written by insurers which are licensed as regulated insurers by the District of Columbia government and are in good standing under such license, with a rating by the A.M. Best Company of A- or greater, and with a financial class size of VIII or higher, or equivalent ratings from a recognized insurance rating service which the licensing agency has approved in writing.

I.11.2 Contractor shall secure and maintain, and provide evidence that its staff members who are independent contractors secure and maintain (in the form of certificates complying with D.C. Mun. Regs., Titl. 29, §§ 6221.3, 6316.5, 6316.6, and 6316.7), commercial general liability insurance, containing contractual liability insurance, insuring the facility as named insured and naming the contracting entity, licensing agency and the District of Columbia government as additional insured, on an occurrence (not claims-made) basis, with per location or per project limits (exclusive of defense costs) of not less than:

I.11.2.1 One million dollars (\$ 1,000,000) per occurrence for bodily injury or death or property damage, combined single limit;

I.11.2.2 One million dollars (\$ 1,000,000) per occurrence for personal and advertising injury;

I.11.2.3 One million dollars (\$1,000,000) per occurrence for products-completed operations; and

I.11.2.4 Subject to a general aggregate of two million dollars (\$2,000,000) per policy year. All such policies shall be primary coverage and the Contractor's policies shall provide coverage for all staff members excluding independent contractors. Deductibles under commercial general liability insurance policies shall not exceed five thousand dollars (\$5,000.00) per occurrence.

I.11.3 Contractor shall secure and maintain business automobile policy insurance for owned, non-owned and hired vehicles with a combined single limit (exclusive of defense costs) of not less than one million dollars (\$1,000,000). All such policies shall be primary coverage and shall provide coverage for all staff members. Limits for uninsured and under-insured motorists shall be not less than one million dollars (\$1,000,000). Physical damage deductibles under business

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automobile policies shall not exceed five thousand dollars (\$5,000.00) per occurrence.

I.11.4 Contractor shall secure and maintain, and provide evidence that its staff members who are independent contractors secure and maintain:

I.11.4.1 worker's compensation insurance with statutory worker's compensation limits.;

I.11.4.2 professional liability insurance with limits (exclusive of defense costs) of not less than one million dollars (\$1,000,000) per occurrence.

I.11.5 Contractor shall secure and maintain employer's liability insurance with limits of not less than one hundred thousand dollars (\$ 100,000) per accident, five hundred thousand dollars (\$ 500,000) disease policy limit, one hundred thousand dollars (\$ 100,000) disease, each employee. All such policies shall be primary coverage and shall provide coverage for all staff members.

I.11.6 Contractor shall secure and maintain coverage of the building, improvements, furnishings, fixtures and equipment, inventory and other personal property by broad form ("all-risk") commercial property insurance on a full replacement cost, agreed amount basis, waiving subrogation against the licensing agency, the contracting entity and the District of Columbia government and containing an additional insured endorsement naming the licensing agency, the contracting entity and the District of Columbia government as additional insured. Contractor shall secure and maintain time value insurance coverage for one hundred percent (100%) of the loss of income/extra expense coverage incurred in occurrences covered by the facility's commercial property insurance policy. Deductibles under property insurance policies maintained by the facility shall not exceed five thousand dollars (\$ 5,000.00) per occurrence. All such policies shall be primary coverage. If all or a portion of the above coverages are maintained by the Contractor's landlord, the Contractor shall also provide evidence of the landlord's, which evidence shall include a waiver of subrogation against the licensing agency, the contracting entity and the District of Columbia government.

I.11.7 Contractor shall secure and maintain excess or umbrella liability insurance with limits of not less than ten million dollars (\$ 10,000,000) per occurrence, subject to a general aggregate of ten million dollars (\$ 10,000,000) per policy year, and self-insured retention of no more ten thousand dollars (\$ 10,000), covering not less than the same liabilities and coverages set forth in D.C. Mun. Regs, Titl. 29, § § 6221 and 6316, in excess of the limits specified in those policies.

I.11.8 The insurance policies required by this section shall contain the following endorsement:

"It is hereby understood and agreed that the insurer may not cancel, fail to renew, or reduce the coverage or liability limits of this policy unless the insurer provides the contacting entity, licensing agency, and the Office of the City Administrator with written notice of an intent to take such action at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance of any other such action. The insurer shall serve notice to the

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following persons by certified mail, return receipt requested:

Director
Child and Family Services Agency
400 6th Street SW
Washington, D.C. 20024

Office of the City Administrator
Attention Risk Management Officer
441 4th Street, N.W.
Suite 1150
Washington, D.C. 20001"

- I.11.9** Contractor shall defend, indemnify and hold the contracting entity, licensing agency, and the District of Columbia government, and its elected and appointed officials and officers, employees, agents and representatives, harmless from and against any and all injuries, claims, demands, judgments, suits in law and equity (including without limitation, habeas corpus actions), actions before administrative tribunals, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, that actually or allegedly, in whole or in part, arise out of, or result from:
- I.11.9.1** The operation of the facility;
- I.11.9.2** Performing or failing to perform duties required by or reasonably related to the requirements of the contract between the facility and the contracting entity; or
- I.11.9.3** Providing or offering services, whether or not caused by the facility or its affiliates, officers, employees, agents, contractors or subcontractors;
- whether or not such acts or omissions were alleged or proven to have been caused in whole or in part by the contracting entity, the licensing agency or the District of Columbia government, and whether or not such acts or omissions are authorized, allowed or prohibited by this Chapter. The facility's indemnity obligations under this section shall not apply to any injuries, claims, demands, judgments, damages, losses or expenses to the extent arising out of or resulting from the gross negligence or willful misconduct by the contracting entity; the licensing agency or the District of Columbia government, or their officials, officers, employees, agents or representatives, provided that no such gross negligence or willful misconduct, alleged or actual, shall affect the facility's obligation to defend the contracting entity, licensing agency, and the District of Columbia government.
- I.11.9.4** Contractors shall provide copies of the policies for any or all of the insurance required by this section to the contracting entity and licensing agency upon written request.

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I.12 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Attachment J4. An award cannot be made to any Offeror who has not satisfied the equal employment requirements as set forth by the Department of Human Rights and Local Business Development.

I.13 PRE-AWARD APPROVAL

The award and enforceability of this contract is contingent upon Council Approval. In accordance with the Council Contract Review Criteria Amendment Act of 1999, D.C. Official Code 2-301.05(a).

******END OF SECTION I******